REMARKS

This amendment is in response to the Office Action of November 1, 2007 in which claims 1, 4, 10, 11, 29, 32, 38, 39 and 57-62 were rejected.

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Claims 1 and 29 are amended to remove objections raised by the Examiner and to emphasize the difference between the prior art quoted by the Examiner and the present invention. Claims 10, 38, 57, 59-60 and 62 are cancelled.

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Specification is objected to as failing to provide proper antecedent basis for "a low value" and "a high value" recited in Claims 1 and 29.

The applicant disagrees with this objection. Even though specification does not refer to "low value" and "high value" directly, a parameter **"a predetermined range defined by a low value and a high value"** is used in claims 1 and 29 of the present invention as a common sense description (what else it can be?). The notion of low and high value is obvious to a person skilled in the art, because theoretically in any feedback system based on the crossing a threshold value we have to talk about a certain "border line" deviation (even very small) from the threshold value to which the threshold feedback system can respond, thus having low and high values. In spite of disagreement with the office in regard to this objection, the applicant amended claims 1 and 29 to remove reference to low and high values to refer to "substantially near a threshold value".

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Furthermore, claims 1, 10, 29, 38, 58 and 61 are rejected under 35 U.S.C. 102(e) as being anticipated by Fiorini et al. (US Patent No. 6760596). Also claims 4, 11, 32, 39, 57, 59, 60 and 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over

under 35 U.S.C. 102(e) as being anticipated by Fiorini et al. (US Patent No. 6760596) in view of Andersson et al. (U.S. Patent No.: 6,334,047).

The applicant disagrees with these rejections and refers to the arguments present in the Remarks Section of the Amendment A submitted on September 10, 2007. Additional arguments are presented below.

The Examiner repeated the rejection of the previous office action finding our arguments not persuasive.

In the Response to Argument Section of the present Office Action, the Examiner argues that changing a spreading factor based on measured C/I ratio is enough to ensure the desired frame or block error rate. The applicant agrees that in general the C/I ratio may be somewhat related to the frame or block error rate but it **is not the same** (nobody can predict the **exact relationship** between the C/I ratio and the block error rate). In the present invention independent claims 1 and 29 recite that the spreading factor is also based on the frame or block error rate in addition to being dependent on the C/I ratio. Both claims 1 and 29 state: "**wherein said changing the spreading factor is carried out only if said frame or said block error rate meets a selected criterion.**" Even thought the applicant disagrees with the rejection , in order to further reinforce the point made above, claims 1 are 29 are amended to include "**determining the frame or block error rate**". Thus, in claims 1 and 29 of the present invention we have **two parameters** to be considered when determining the change in the spreading factor: the **predetermined parameter** (which can be, e.g., C/I ratio) and the **frame or block error rate.** This is different from what is disclosed by Fiorini et al. In other words, Fiorini et al. do not disclose the added step of "**further determining a frame or block error rate of said radio uplink channel**", as recited in amended claim 1 (the same is applied to amended claim 29) submitted herein, and Fiorini et al.

do not disclose a **direct** dependence of the spreading factor on **two** parameters: a **predetermined parameter such as C/R ratio** and the **frame or block error rate** (as recited in claims 1 and 29 of the present invention), which is different from what is taught by Fiorini et al. describing a **direct dependence** only on **one parameter**, e.g., C/R ratio, but not on both. It is noted that the amended claims 1 and 29 of the present invention, submitted herein, do not contain any new matter which was not examined before because the added features in claims 1 and 29 were recited in cancelled claims 10 and 38 of the present invention, therefore no new search is not needed.

Thus, claims 1 and 29 of the present invention are novel and not anticipated by Fiorini et al under 35 U.S.C. 102(e). Moreover, the novelty of claims 58 and 61 is provided by the novelty of amended claims 1 and 29 under 35 U.S.C. 102(e) as being anticipated by Fiorini et al. The same is applied to dependent claims 4, 11, 32 and 39 (i.e., claims 4, 11, 32 and 39 are novel and non-obvious as being dependent claims of novel and non-obvious claims 1 and 29).

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Furthermore, in regard to arguments presented by the Examiner on 103 rejection of claims 4, 11, 32 and 39 in the Response to Arguments" section of the present Office Action, the applicant disagrees with the Office policy of ignoring MPEP Paragraph 2143 which requires to provide a proof of suggestion or motivation for combining reference, because any patent issued in the past and in the future can be declared invalid by combining in hindsight separate parts of any invention known from different sources. The burden of proof is on the Patent Office to provide the evidence, which is not done here.

Furthermore, in regard to "teaching away" of combination of Fioriniy et al. with Andersson et al. discussed in the Remarks of the Amendment A submitted to the USPTO on September 10, 2007
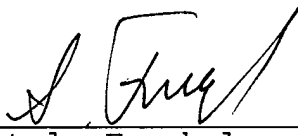
(discussed only for the sake of argument) which was not clear to the Examiner (see Response to Argument Section of the present Office Action), the applicant wants to merely clarify the arguments presented in the Remarks of the Amendment A. Combining Fioriniy et al. with Andersson et al. will teach away from the present invention because TPC command described by Andersson et al. does not contain information about change in the spreading factor as recited in claims 4 and 29 of the present invention, thus TCP command of Andersson is useless. Indeed TCP command is well known in the art, therefore according to the Office strategy, any reference mentioning TCP command can be used here, which is not true: the applicant believe the command of Andersson et al. (or any other reference) should disclose sending spreading factor information but not "any" power information in order to be combinable with Fioriniu et al, to disclose the subject matter of claims 4, 11, 32 and 39 of the present invention. Thus it is further shown here that claims 4, 11, 32 and 39, are not obvious under 35 U.S.C. 103(a) as being anticipated by Fiorini et al. in view of Andersson et al.

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The rejections of the Official Action of November 1, 2007, having been obviated by this amendment or shown to be inapplicable, withdrawal thereof is requested, and passage of the claims to issue is solicited.

Respectfully submitted,

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